IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting.

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 210(S/S) of 2001

Date of decision: 07/09/2006

~~**A.F.R. (Approved for reporting)**~~

Not approved for reporting

Date: 07/09/2006 Initial of Judge

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put up before Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No.210 (S/S) of 2001

Sri Namo Narain Sharma
S/o Sri Chunni Lal Sharma
R/o House No.1/100 Phool Bagh
Pantnagar, P.O. Pantnagar
District U.N. Nagar .....Petitioner

Versus

1. Vice Chancellor
   G.B. Pant University of Agriculture & Technology
   Pantnagar, U.N. Nagar
2. Registrar, G.B. Pant University of Agriculture & Technology Pantnagar, U.N. Nagar
3. Establishment Officer
   G.B. Pant University of Agriculture & Technology
   Pantnagar, U.N. Nagar .....Respondents

Dated: - 07th September, 2006

Mr. Manoj Tiwari learned counsel for the petitioner.
Mr. Rajendra Dobhal learned counsel for the respondents.

Hon'ble J.C.S. Rawat, J.

1. By means of this writ petition under section 226 of the Construction of India, the petitioner has sought the following reliefs:-

(i) to issue a writ order or direction in the nature of certiorari for quashing the order dated 6.2.2001 passed by the respondent no. 1.

(ii) to issue a writ order or direction in the nature of mandamus commanding the respondents to regularize the services of the petitioner on the post of Dark Room Assistant in view of his work, performance and long experience and also in view of the permanent nature of work in the Communication Centre of the University.

(iii) to issue a writ order or direction in the nature of mandamus commanding the respondents to pay the same salary to the petitioner as is being paid to other skilled Class III employees of the University on the basis of the principle of equal pay for equal work.

(iv) To issue any other suitable order or direction as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.

(v) To award the costs of the writ petition to the petitioner.

2. The petitioner's case is that on 15.07.1992 he was initially appointed in the respondents' office (University) on daily wages basis. The Director, Communication Centre of University issued a Notification on 3.7.1992 inviting the application for appointment as Dark Room Assistant. The petitioner has also submitted his application and ultimately he was selected for the said post on 15.07.1992. Thereafter he has been serving continuously on the said post till date. When the services of the petitioner were not regularized by the University he preferred a petition before the Allahabad High Court and the Allahabad High Court in W.P. No.48386/2000 (S/S) on 7.1.2000 directed the authority concerned of the University to decide the representation of the petitioner by a speaking and reasoned order within the stipulated period. Pursuant to the said order, the petitioner submitted his representation on 13.11.2000 before the authority. The Vice Chancellor of the University has rejected the representation of the petitioner vide impugned order dated 6.2.2001. Feeling

aggrieved by this, the present petition has been filed before this Court.

3. I have heard the learned counsel for the parties and perused the record.

4. It was contended that the sanctioned post of Dark Room Assistant are lying vacant in the respondents' University since long and the regular appointment has not been made so far. The petitioner has been working since long and as such he is entitled to be regularized on the post of Dark Room Assistant. In was further contended that the petitioner is entitled to get equal pay for equal work. Learned counsel for the respondents refuted the contention. It has been alleged in the counter affidavit that the petitioner is not entitled for any relief and he was not appointed against the regular and substantive vacancy. The petitioner was appointed as daily wages worker on contractual basis due to exigency of work for a fixed period by the Director Communication Centre of the University. It is well settled position of law that if a person is appointed on a contractual basis, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a daily wager can not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a daily wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the

instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Ti is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It has been held by the Hon'ble Supreme court in **Secretary, State of Karnataka Vs. Umadevi 2006 AIR SCW p/1991** that:-

> *"34. …….. thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term to his appointment, he would not be entitled to be absorbed in regular service or made*

permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

35. ……..

36. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true

that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning

of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

5. The learned counsel for the petitioner further contended that the petitioner had made a number representations before the University claiming the equal pay for equal work. It was contended that the petitioner has a vested right to get the equal pay for equal work. The respondents are treating the petitioner unfairly by giving him less wages in comparison with those directly recruited who are getting more wages or salaries for doing the similar work. Learned counsel for the respondents refuted the contention. The petitioner was employed on daily wages in the University. It is not the case of the petitioner that the wages agreed upon was not being paid by the respondents. The petitioner was a daily wager and he cannot claim that he is discriminated as against those who have been regularly recruited on the basis of the relevant rules. The petitioner has no right to claim the equal pay for equal work. It has been noticed that the government had time to time revised the wages of the daily wagers keeping in mind the inflation prevalent in the society. When any person is appointed as daily wager or ad-hoc employee, he knows the nature of his appointment and the wages he would get after his engagement. He accepts the employment knowing the consequences of the employment. He also knows that he had been appointed by the appointing authority without any process being undertaken for selection and he had deprived a number of persons who were aspirant of the employment. He very well knows that he had got the employment with the sympathy of

the appointing authority. Thus, he would be ready to face the consequences of the employment which he had received in relaxation of the authorities and behind the back of constitutional scheme. Thus, such employees whose induction in the service is itself against the constitutional scheme, create a class itself and they cannot claim parity with the duly appointed employees under the constitutional scheme. It has been held in Umadevi (supra) that:-

> *"39. It was then contended that the rights of the employees thus appointed, under Article 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wages that was made known to them. There is no case that the wages agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. A has been held by his Court, they cannot be said to be holders of a post, since, a regular appointment could be made only be making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended*

to a claim for equal treatment with those who were regularly employed. That would be treating unequal as equals. It cannot also be relied on the claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

40. …….

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violated of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by the Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

6. In view of the above, the petitioner is not entitled to get equal pay for equal work.

7. In view of foregoing discussion, I am of the view that the petition is devoid of merit and is liable to be dismissed.

8. The petition is dismissed accordingly. No order as to costs.

(J.C.S.Rawat, J.)

Dated 07.09.2006
LSR